

# ITEL RAIL

55 Francisco  
San Francisco, California 94133  
(415) 955-9090  
Telex 34234

RECORDATION NO. 9778-8 Filed 1420  
JUN 21 1983 -3 00 PM

INTERSTATE COMMERCE COMMISSION

No. 3-172 A099  
Date JUN 21 1983

10.00

June 16, 1983

ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation for filing and recordation under Recordation No. 9778, which is the Lease Agreement dated March 15, 1978 (the "Lease") between Itel Corporation, Rail Division and the Texas Mexican Railway Company (the "Lessee"), filed on October 17, 1978 at 3:30 p.m., four counterparts of the following document:

Amendment No. 6 dated April 11, 1983 (the "Amendment") to the Lease between Itel and the Lessee.

The names and addresses of the parties to the aforementioned Amendment are:

1. Texas Mexican Railroad Company  
P.O. Box 419  
Laredo, Texas 78040
2. Itel Corporation, Rail Division  
55 Francisco, 7th Floor  
San Francisco, California 94133

The equipment covered by this Amendment is forty nine (49) 89', 70-ton flatcars, AAR mechanical designation FC, bearing reporting marks SOO 54845 through SOO 54893, inclusive.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

RECEIVED  
JUN 21 1983  
FEE OPERATIONS

*See below this  
may be  
9778-L  
but please check*

*Agatha Mergenovich  
C. Mergenovich*

Ms. Agatha Mergenovich, Secretary  
June , 1983  
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Salas Pineda', written in a cursive style.

Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

cc: Michael Walsh, Esq.  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10020

Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84125

Doug Drummond  
Itel Corporation

9778-1  
L-0471  
4/8/83

RECORDATION NO. 9778-8 Filed 142

JUN 21 1983 -3 00 PM

AMENDMENT NO. 6 INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 6 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of March 15, 1978 between ITEL CORPORATION, RAIL DIVISION ("Lessor") and THE TEXAS MEXICAN RAILWAY COMPANY ("Lessee") is made this 11th day of April, 1983 between Lessor and Lessee.

W I T N E S S E T H:

WHEREAS, Lessor and Lessee are parties to the Agreement, pursuant to which three hundred (300) flatcars bearing the reporting marks TM 400000-400299 ("Car(s)"), have been leased and delivered by Lessor to Lessee, of which twelve (12) of the Cars are no longer subject to the Agreement pursuant to a termination letter dated as of August 4, 1982, and of which three (3) of the Cars bearing the reporting marks TM 400220, TM 400227 and TM 400243 were destroyed on or about June 15, 1980, July 24, 1979 and July 9, 1982, respectively; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to reflect the Cars remaining subject to the Agreement.

WHEREAS, Lessor and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of the remaining Cars for a period of time to improve the utilization of and revenues from such Cars.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Equipment Schedule No. 4, executed December 20, 1978 and attached to and incorporated into the Agreement, is hereby amended by (i) the deletion of the reporting marks "TM 400150-400299" from the "Numbers" column and the substitution therefor of the reporting marks "TM 400150-400219; TM 400221-400225; TM 400233; TM 400236-400239; TM 400244; and TM 400246-400299", and (ii) the deletion of the number "150" from the "No. of Cars" column and the substitution therefor of the number "135".
3. Lessor consents to Lessee's entering into a sublease agreement (the "Sublease") with the Soo Line Railroad (hereinafter called "Sublessee") for forty-nine (49) of the Cars as described on Exhibit A attached hereto (said subleased Cars to be hereinafter referred to as "Flatcar(s)") for a period of time to improve the utilization of and revenues from the Flatcars.
4. The term of the Sublease with respect to each Flatcar shall commence at 12:00 Noon on the date and at the location that such Flatcar is restencilled with the Sublessee's reporting marks, and shall expire as to all of the Flatcars described on Exhibit A attached hereto, three (3) years from the date on which the first Flatcar on Exhibit A attached hereto was restencilled (the "Sublease Term").
5. During the Sublease Term only and solely with respect to the Flatcars, Section 3.E., which shall read as follows, is hereby added to the Agreement.

ASSIGNED TO FIRST SECURITY BANK  
OF UTAH, N.A., TRUSTEE, UNDER  
A LEASE ASSIGNMENT DATED  
AS OF April 11, 1983

LESSOR'S INTEREST ASSIGNED TO  
FIRST SECURITY BANK OF  
UTAH, N.A., WITH FIRST PRIORITY TO  
CARS NUMBERED TM 400150-400244 (w.s.)

"3.E. Lessor shall, at its expense, restencil the Flatcars with the reporting marks SOO 54845-54893 in compliance with all applicable regulations. Concurrent with any restencilling, Lessor shall execute a Certificate of Restencilling (in the form of Exhibit B attached hereto) specifying the previous and current reporting marks of each Flatcar. Such Certificates of Restencilling shall become attached to and incorporated into this Agreement."

6. During the Sublease Term only and solely with respect to the Flatcars, Section 4 of the Agreement, as it now reads ("Old Section 4") shall be replaced by the following:

**"4. Record Keeping**

A. Lessee shall, at its expense, prepare and file, with respect to the Flatcars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to the following: (i) preparation of appropriate Association of American Railroads ("AAR") interchange agreements with respect to the Flatcars; (ii) registration of the Flatcars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Flatcars. Lessee shall register each Flatcar in the UMLER in such a manner that Lessor is allowed access to any required information with regard to each Flatcar. In addition, Lessee shall be responsible for any expenses incurred and rent lost as the result of any improper UMLER registration except if due to the fault of Lessor. Lessor agrees to provide to Lessee all necessary information in Lessor's possession to accomplish the above filings and proceedings.

B. Lessee shall perform all record keeping functions relating to the use of the Flatcars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as hereinafter defined in Section 6.A.(i)) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Flatcars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours. Lessor shall be entitled to make such inspection at will."

Upon the expiration or early termination of the Sublease, Old Section 4 shall be reinstated in the Agreement with respect to the Flatcars.

7. During the Sublease Term only and solely with respect to the Flatcars, Section 5 of the Agreement, as it now reads ("Old Section 5") shall be replaced by the following:

**"5. Maintenance, Tax and Insurance**

**A.** Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed inspections of (other than interchange inspections), maintenance and repairs to, and servicing of the Flatcars as shall be necessary to maintain the Flatcars in good operating condition as specified in the AAR Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Flatcars interchanged to it to insure that such Flatcars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Flatcars which may be caused by any shipper on Lessee's railroad line.

**B.** Except as otherwise provided herein, Lessor shall arrange to have performed, at its expense, all maintenance, alterations, modifications or replacement of parts as shall be necessary to maintain the Flatcars in good operating condition. Lessee may make AAR running repairs to facilitate continued immediate use of each Flatcar, but shall not otherwise make or cause to have made any repairs other than AAR running repairs in excess of three hundred (300) dollars per Flatcar, or any other alterations, improvements, or additions to any Flatcar without Lessor's prior written consent. If, within fifteen (15) days of receipt of Lessee's written request to make or cause to have made repairs in excess of three hundred (300) dollars with respect to any Flatcar, Lessor does not give prior written consent, such Flatcar shall be removed from the rental calculations of this Agreement on the fifteenth (15th) day following Lessor's receipt of Lessee's request until the date such Flatcar is repaired. Lessee shall be liable to Lessor for any Revenues lost due to any unauthorized repair, alterations, improvement or addition. Title to any such alteration, improvement or addition shall be and remain with Lessor.

**C.** As long as this Agreement shall remain in effect, Lessee shall be responsible for the Flatcars (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) all risk physical loss or damage insurance with respect to the Flatcars while on Lessee's tracks or in Lessee's care, custody or control; provided, however, that the Lessee may self-insure such Flatcars to the extent it self-insures equipment owned by the Lessee and similar to the Flatcars and to the extent such self-insurance is consistent with prudent industry practice, and (b) public liability insurance with respect to third party

personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies which are satisfactory to the Lessor; provided, however, that Lessee may self-insure against such liability to the extent such self-insurance is consistent with prudent industry practice, but in any event such insurance shall be at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned by it. Lessee shall furnish to Lessor concurrently with execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, certificates of insurance evidencing the aforesaid insurance. Lessor shall have the right to obtain a Certified Copy of each insurance policy upon written request to the Lessee. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and bill the cost to Lessee. With respect to the additional insureds, it is further agreed that the same are entitled to full protection afforded by Lessee's insurance policies, and said policies shall be primary to any other valid and available insurance effected by or for the additional insureds in respect of whom the insurers specifically agree to waive subrogation and/or claim and/or recovery. It is further agreed that each policy will be endorsed evidencing the above, and these endorsements will be evidenced on the Certificate of Insurance provided to the Lessor. Any and all deductibles in the described policies shall be assumed by the Lessee.

D. Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify Lessor and its successors against taxes, fees, levies, impost, duties or withholdings of any nature together with penalties, fines or interest thereon (Taxes) imposed on, incurred by or asserted against: (1) the Flatcars, (2) lease, sublease or delivery of the Flatcars, (3) revenues earned by the Flatcars, including but not limited to mileage charges and/or car hire revenues, during the term of this Agreement, except Taxes on income and franchise taxes imposed on Lessor. Lessee shall comply with all state and local laws requiring filing of ad valorem tax returns associated with the Flatcars and shall provide Lessor with a photostatic copy of the receipted ad valorem tax bill within thirty (30) days after receipt.

E. In the event that any or all of the Flatcars require storage on Lessee's railroad lines at any time prior to the expiration of this Agreement, or earlier termination (as set forth in Section 9.A.), Lessee shall be responsible for the following: (1) all reasonable transportation costs incurred to move the Flatcars to such storage location; (2) all reasonable transportation costs incurred in removing such Flatcars from the storage location; and (3) the actual costs incurred for the storage of each Flatcar for up to two hundred seventy (270) days. If Lessor pays for any costs accountable to Lessee referred to in this Section, Lessee shall reimburse Lessor for such cost within thirty (30) days from Lessee's receipt of Lessor's invoice."

8. During the Sublease Term only and solely with respect to the Flatcars, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following:

**"6. Lease Rental**

**A. Definitions**

(i) "Revenues" shall be the total revenues earned and due from railroad companies other than Sublessee for the use or handling of the Flatcars, including but not limited to, per diem and mileage (except for any reclaim applied to any Flatcar deemed damaged in accordance with Rule 7 of the AAR Code of Car Hire Rules and Interpretation-Freight), whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset caused by any action of Lessee, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.

(ii) The "Utilization Rate" of the Flatcars shall be determined by a fraction, the numerator of which is the aggregate number of hours in each calendar year that Revenues were earned on the Flatcars commencing from the Initial Loading, and the denominator of which is the aggregate number of hours in each calendar year that the Flatcars are on lease to Lessee, commencing from the Initial Loading. For the purposes hereof, "Initial Loading" as to each Flatcar shall be the earlier to occur of either (1) the hour such Flatcar shall have been loaded

of Sublessee's railroad line with the first load of freight, or (2) 12:00 Noon on the thirty-first (31st) day after such Flatcar is delivered to Sublessee pursuant to the Sublease.

(iii) The "Base Rental" shall be defined as the sum equal to the Revenues which the Flatcars would have earned in the aggregate at a Utilization Rate of fifty (50) percent with the assumption that each Flatcar traveled one hundred thirty-five (135) miles a day.

B. Lessor shall receive all Revenues earned by the Flatcars prior to their Initial Loading. Each Flatcar delivered to the Sublessee pursuant to the Sublease shall become subject to the rental calculation under Section 6.C. hereof upon the Initial Loading of such Flatcar.

C. Lessee agrees to pay the following rent to Lessor for the use of the Flatcars:

(i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the Base Rental, Lessee shall pay to Lessor a sum equal to one hundred (100) percent of the total Revenues.

(ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rental, Lessee shall pay to Lessor an amount equal to the Base Rental plus seventy-five (75) percent of all Revenues earned in excess of the Base Rental and Lessee shall retain the remaining twenty-five (25) percent of all Revenues earned in excess of the Base Rental.

D. (i) The calculations required in Section 6.C. shall be made within five (5) months after the end of each calendar year ("Final Calculations"). In order that Lessor may meet its financial commitments, Lessee shall pay to Lessor by the seventy-fifth (75th) day after the end of each Service Month (as hereinafter defined), ninety-two (92) percent of the total Revenues for that Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which Revenues were actually earned. At the time payment of ninety-two percent (92%) of the total Revenues is made to Lessor, Lessee shall report to Lessor for the same month, the hours earned, miles traveled and dollar figure



for one hundred percent (100%) of the Revenues. Four percent (4%) of the Revenues shall be remitted to Lessor within one hundred five (105) days after the end of each Service Month and the remaining four percent (4%) of the total Revenues shall be remitted to Lessor within one hundred thirty-five (135) days after the end of each Service Month. Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

(ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues earned and received by Lessee for the use and handling of the Flatcars. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 6.D.(i).

E. If, with respect to any calendar quarter, the Utilization Rate of the Flatcars is less than sixty-two (62) percent, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Flatcars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the amount equal to the Revenues which the Flatcars would have earned in the aggregate at a Utilization Rate of sixty-two (62) percent for such calendar quarter.

F. In the event damage beyond repair or destruction of a Flatcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Flatcar will be removed from the rental calculations of this Agreement as of the date and hour car hire ceased as set forth in the aforementioned Rule

7. With respect to any destroyed Flatcar, Lessor shall provide Lessee with the information necessary for Lessee to prepare a depreciation value (DV) statement to provide for a settlement in accordance with AAR Rule 107. Lessor may, at its expense, replace any destroyed Flatcar with similar equipment upon prior written notice from Lessor to Lessee."

Upon the expiration or early termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Flatcars.

9. With respect to the Flatcars only, the number "thirty (30)" shall be substituted for the number "ten (10)" in Section 8(ii).
10. During the Sublease Term only and solely with respect to the Flatcars, Section 9 of the Agreement as is now reads ("Old Section 9") shall be replaced by the following:

**"9. Expiration or Earlier Termination**

A. Upon the expiration of this Agreement or in the event of earlier termination, whether pursuant to Section 8, Section 6.E. or Section 6.F. hereof, with respect to any Flatcar, Lessee shall, at its expense, promptly return such Flatcar to Lessor by delivering such Flatcar to a shop specified by Lessor which shall be on Lessee's railroad tracks. Subsequent procedures shall be as follows:

Lessee shall, at its expense, restencil the Flatcars in accordance with Lessor's instructions and return the Flatcars in the same conditions as originally received by Lessee, normal wear and tear excepted. Lessor shall provide to Lessee the restencilling instructions within one hundred eighty (180) days subsequent to the expiration or earlier termination of this Agreement with respect to any Flatcar. Restencilling, with respect to each Flatcar, shall include the following: (a) removal of existing mandatory markings and all company logos of Lessee; (b) complete cleaning subsequent to the removal of markings; (c) application of new mandatory markings as designated by Lessor; and (d) any transportation involved in moving each Flatcar to and from a suitable work area to perform the restencilling set forth in this Section. Lessee shall not remove Lessee's railroad marks from any Flatcar without the prior written consent of Lessor. Lessee shall be responsible for the storage of each Flatcar on its railroad line for the period subsequent to the date of expiration or earlier termination until such Flatcar is restencilled. Subsequent to the completion of the restencilling of each Flatcar, Lessee shall, upon Lessor's request and at Lessor's sole option, and at Lessee's expense, provide an outbound load for such Flatcar, or in the event no outbound loads are available, deliver such car to any interchange point designated by Lessor on Lessee's railroad tracks.

B. In the event that any Flatcar is not returned to Lessor as set forth in Section 9.A. herein on or before the date of expiration or earlier termination of this Agreement, all of Lessee's obligations under this Agreement shall remain in full force and effect with respect to all Flatcars which have not been returned by Lessee to Lessor until such Flatcars are returned to Lessor as set forth in Section 9.A. herein."

Upon the expiration or early termination of the Sublease, Old Section 9 shall be reinstated in the Agreement with respect to the Flatcars.

11. Nothing set forth in this Amendment with respect to the Agreement represents a waiver by the parties hereto of any rights under the Agreement or the Bankruptcy Code and is not an assumption of the Agreement under the Bankruptcy Code, and in the event of rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Agreement.
12. The parties agree that all rights and obligations of Lessor may be assigned to Itel Rail Corporation upon confirmation of a Plan of Reorganization for Itel Corporation by the United States Bankruptcy Court Northern District of California or by another court of competent jurisdiction, and that upon such assignment and upon the assumption of Itel Rail Corporation of all of Itel Corporation's obligations hereunder, Itel Corporation is hereby released from all liabilities hereunder without further action by the parties and Itel Rail Corporation shall assume all such obligations without further action by the parties.
13. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
14. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL CORPORATION,  
RAIL DIVISION

By: 

Title: May 24 '83 President

Date: May 24, 1983

THE TEXAS MEXICAN  
RAILWAY COMPANY

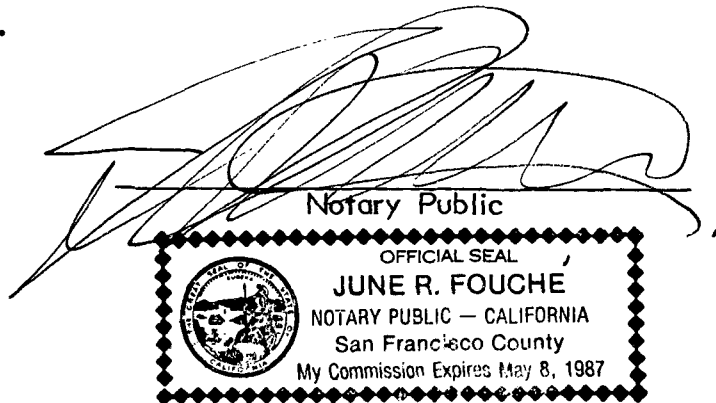
By: 

Title: A. R. RAMOS, Chairman  
and Ch. Exec. Ofc.

Date: 4-12-83

STATE OF CALIFORNIA       )  
  )  
COUNTY OF SAN FRANCISCO ) ss:

On this 24 day of May, 1983, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of IteI Corporation, Rail Division, that the foregoing Amendment No. 6 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



STATE OF Texas       )  
  )  
COUNTY OF Webb       ) ss:

On this 12th day of April, 1983, before me personally appeared A. R. Ramos, to me personally known, who being by me duly sworn says that such person is Chmn & Ch Exec Off of The Texas Mexican Railway Company, that the foregoing Amendment No. 6 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sandra Sue Webber  
Notary Public

L-0471

EXHIBIT A

TM 400152	TM 400188	TM 400219
400156	400194	400222
400157	400200	400223
400158	400202	400224
400162	400203	400225
400164	400204	400233
400165	400205	400236
400167	400207	400237
400168	400208	400238
400169	400209	400239
400170	400211	400244
400173	400212	400246
400174	400213	400247
400176	400215	400248
400179	400216	400249
400184	400217	
400187	400218	

L-0471

EXHIBIT B

CERTIFICATE OF RESTENCILLING

<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Restencilling</u>	<u>Previous Flatcar Marks</u>	<u>Current Flatcar Marks</u>	<u>Date of Restencilling</u>
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Itel Corporation, Rail Division